

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Person to Contact: [REDACTED]

Telephone Number: [REDACTED]

Refer Reply to: [REDACTED]

Date: [REDACTED]

OCT 26 1993

BY CERTIFIED MAIL

Employer Identification Number: [REDACTED]
Key District: Cincinnati, Ohio
Form Number: 1120
Tax Years: [REDACTED]

Dear Applicant:

This letter is a final adverse ruling with respect to your request for classification as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986.

Our adverse ruling was made for the following reasons:

You have failed to establish that you are operated exclusively for exempt purposes as required by section 501(c)(3). Your description of your activities is insufficient to allow us to conclude that you do not operate for private benefit, that you do not have a substantial non-exempt purpose or that your earnings do not inure to private persons.

Furthermore, in view of your letter dated [REDACTED], forwarding a copy of the Certificate of Dissolution issued by the [REDACTED] Secretary of State to your organization on [REDACTED], you are not organized and operated exclusively for exempt purposes within the meaning of section 501(c)(3) of the Code.

Accordingly, you do not meet the requirements for exemption from income tax under section 501(c)(3) of the Code.

You are required to file federal income tax returns on the above form. Based on the financial information you furnished, it appears that returns should be filed for the tax years shown above. You should file these returns with your key District Director for exempt organization matters within 30 days from the date of this letter unless a request for an extension of time is granted. Returns for later tax years should be filed with the appropriate service center indicated in the instructions for those returns.

[REDACTED]

If you decide to contest this ruling under the declaratory judgment provisions of section 7428 of the Code, you must initiate a suit in the United States Tax Court, the United States Court of Federal Claims, or the United States District Court for the District of Columbia before the 91st day after the date on which this ruling was mailed to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment. Processing of income tax returns and assessment of any taxes due will not be delayed because a declaratory judgment suit has been filed under section 7428.

In accordance with the provisions of section 6104(c) of the Code, we will notify the appropriate state officials of this ruling.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

Thank you for your cooperation.

Sincerely,

(Signed) [REDACTED]

[REDACTED]
Director
Exempt Organizations
Technical Division

cc: [REDACTED]

cc: [REDACTED]

[REDACTED]
10/18/93

[REDACTED]
10/18/93

[REDACTED]
10/20/93

[REDACTED]
[REDACTED]
[REDACTED]
JUN 15 1993

Key District: [REDACTED]
Employer Identification Number: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income taxation under section 501(c)(3) of the Internal Revenue Code of 1986 and have decided that you have not shown that you are exempt under that subsection.

The information submitted discloses that you were incorporated on [REDACTED] under the [REDACTED] Nonprofit Corporation Act. As amended and restated on [REDACTED], you are organized and will be operated exclusively for charitable and educational purposes within the meaning of section 501(c)(3) of the Code. Your articles contain an acceptable dissolution clause. Accordingly, as amended and restated, your articles satisfy the organizational test of section 1.501(c)(3)-1(b)(1) and (4) of the Treasury regulations.

In operation, you have stated that you will raise money by means of telemarketing, having executed various contracts providing up to 75% of the funds raised being paid for fund-raising expenses. Under these contracts, you will pay up to 37 1/2 percent of gross receipts raised to a telemarketer for the services of telephone solicitors. In addition, you may have an obligation to pay to a telemarketer up to an additional 37 1/2 percent of gross receipts raised for mailing your literature. You supply the literature to the telemarketer. The contents of this literature is a generic discussion of [REDACTED] matters taken from National Institutes of Health publications and does not relate, except in general, to specific issues related to children suffering from the condition.

The Service has sought information from you on a number of occasions subsequent to your application. The key District Director sought information in a letter dated [REDACTED], to which you replied on [REDACTED]. After the District referred your application to the National Office on [REDACTED], the National Office sought additional information on [REDACTED]. You responded on [REDACTED], by seeking an

extension of time to reply, which we granted on the same day. You then replied to our original inquiry on [REDACTED]. Finding your reply incomplete, we again sought information on [REDACTED], in reply to which your new attorney filed a power of attorney on [REDACTED], at which time he sought and received a further extension of time to answer, dated [REDACTED]. He submitted a response dated [REDACTED], and sent additional information dated [REDACTED], which he had previously failed to include in his reply. In response we sought additional information on [REDACTED], to which you replied on [REDACTED], promising additional information in a FAX dated [REDACTED]. We granted you the requested extension on [REDACTED], noting that we would grant no further extensions. You submitted additional information on [REDACTED], and we again sought information in a letter dated [REDACTED], to which you replied on [REDACTED]. In that letter, your president agreed that you do not seek exemption prior to [REDACTED], the date on which your last fund-raising contract of the type indicated in your letter dated [REDACTED], was terminated.

We then sought more information on [REDACTED], to which you replied on [REDACTED]. On [REDACTED], we made another request for additional information to which you replied on [REDACTED]. We made our last request to date for information on [REDACTED], to which you replied on [REDACTED].

Despite the extraordinary number of opportunities to present your case, extensions of time to answer, and responses, we still do not have a clear idea of what you do or how you do it. Your answers are vague and difficult to assess on an objective basis. For instance, on one page of a response, we cite your [REDACTED] in the second paragraph on page 3, which speaks of "a portion of [REDACTED] time spent on fund-raising" without stating the amount of this time. In the same paragraph, you speak of the contractor having contacted local service providers but provide no details as to the amount of time, effort, etc. that was involved. In the last paragraph on that same page, you present no facts to back up your claim that only 60% of the funds which you receive occur as a result of the fund-raising contract.

You have not provided any information about your mailing lists despite prior inquiries. We do not know who supplies the lists or who owns them. Furthermore, your statement that the percentage arrangements in relation to the use of these lists are "reasonable" is conclusory and not based upon a showing of industry norms or the value of comparable refined list ownership.

You have no defined program of charitable giving and have presented no evidence that you have actually given away any funds at all, let alone a substantial amount compared with the funds raised. Your representation that no charities specializing in children with [REDACTED] operate in your area and that you have difficulty locating such organizations is belied by the fact that one telephone call by this office to the [REDACTED] elicited a free [REDACTED] directory of [REDACTED] pages distributed to all requesting it and listing approximately [REDACTED] organizations, some of which operate in your area, even though none is based in your area. The

list of pediatric [redacted] agencies supplied is not exhaustive. You have not indicated that you are even aware of [redacted]'s existence.

We also do not know the nature and extent of your outside directors' involvement with your organization, although you have represented that the membership of your board is now fixed. You have stated that your board members are representative of the community served, knowledgeable, and will be actively involved with your programs. Given the history of your application, we are unable to accept your representation. You have not shown that these new directors are active board members involved in the oversight of your fundraising program and that they have dealt effectively with specific information about how you operate.

You have not indicated how much, if any, money actually goes to AIDS organizations or the families of children with AIDS. We do, however, know that, in addition to your fundraising expenses, detailed above, you also pay a variety of operating expenses for directors, consultants, dues, fees, and printing, which have varied each time we have asked about them. You have not been able to supply consistent, concrete financial information about funds raised and expended in [redacted] and [redacted] and projections for [redacted] and [redacted]. We also do not know the relationship of your consultants to you or exactly what they do and how they do it. With respect to the contracts into which you have entered with fundraisers, we do not know if these persons have any other relationship to your officers. In our letter of [redacted], item 3, we asked you to fully detail your "new" independent contractor agreements. Despite our request in our letter of [redacted], you declined to terminate all of your then current fund-raising contracts.

Section 501(a) of the Code provides, in relevant part, that an organization described in subsection (c) shall be exempt from taxation.

Section 501(c)(3) of the Code provides, in relevant part, for the exemption from federal income taxation of corporations organized and operated exclusively for charitable and educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides, in relevant part, that an organization is not organized or operated exclusively for charitable or educational purposes unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, or persons controlled, directly or indirectly, by such private interests.

Tax exemptions are a matter of legislative grace, and organizations seeking tax exemption "are expected to follow the reasonable standards enacted by Congress and devote themselves exclusively to the pursuit of [charitable] purposes." Parker v. Commissioner, 365 F.2d 792, 795 (8th Cir. 1966); 66-2 USTC ¶9647; cert. denied, 385 U. S. 1026 (1967).

Income tax exemptions must be strictly construed, with any doubts to be resolved in favor of the taxing authority. Harding Hospital, Inc. v. United States, 505 F.2d 1068, 1071 (5th Cir. 1974); 74-2 USTC ¶10,000.

The applicant bears the burden of proving its entitlement to exemption. See Bubbling Well Church of Universal Love, Inc. v. Commissioner, 670 F.2d 104, 106 (9th Cir. 1981); 82-1 USTC ¶9258; and Freedom Church of Revelation v. United States, 588 F. Supp. 693, 696 (D.D.C. 1984); 84-1 USTC ¶9485.

Where a court accepts as true statements in the record made by the applicant if not challenged by the Service, it does not obligate that court [or the Service] otherwise to accept conclusory statements contradicted elsewhere in the record. See Church of Spiritual Technology v. United States, 26 Cl. Ct. 713 (1992), 92-1 USTC ¶30,305; and World Family Corp. v. Commissioner, 81 T. C. 958, 963 (1983); CCH Dec. 40,669.

Section 1.501(a)-1(b)(2) of the Treasury regulations provides, in relevant part, that the Commissioner may require any additional information deemed necessary for a proper determination of whether a particular organization is exempt under section 501(a) of the Code.

Section 5.01 of Rev. Proc. 90-27, 1990-1 C. B. 514, provides, in relevant part, that a ruling letter will be issued to an organization, provided its application and supporting documents establish that it meets the particular requirements of the section under which exemption is claimed.

Section 5.02 of the same revenue procedure provides, in relevant part, that exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. A mere restatement of purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures, or other means adopted or planned for carrying out the activities; the anticipated sources of receipts; and the nature of contemplated expenditures. Where the organization cannot demonstrate to the satisfaction of the Service that its proposed activities will be exempt, a record of actual operations may be required before a ruling letter will be issued. In those cases where an organization is unable to describe fully its purposes and activities, a refusal to issue a ruling letter will be considered an initial adverse determination from which administrative appeal or protest rights will be afforded.

Section 8.02 of Rev. Proc. 93-4, 1993-1 I. R. B. 83, which deals, inter alia, with the issuance of exempt organizations ruling letters recognizing federal income tax exemption, provides, in relevant part, that a ruling is not issued on hypothetical situations.

Although we have afforded you numerous opportunities to do so, you have been unable to describe exactly what you do and how you do it.

Over time, you have provided information which is vague, incomplete, and inconsistent. You have not provided concrete, specific, and detailed information sufficient to support a conclusion by the Service that you are exempt from federal income taxation under section 501(c)(3) of the Code. Furthermore, your failure to provide sufficient information does not satisfy the requirements of section 1.501(c)(3)-1(d)(1)(ii) of the regulations whereby you must demonstrate that you are not organized and operated primarily to serve the interests of private individuals.

Accordingly, we conclude that you have not shown that you are exempt from federal income taxation under section 501(c)(3) of the Code. You are, therefore, required to file federal income tax returns.

You have the right to protest this ruling if you believe that it is incorrect. To protest you should submit a statement of your views with a full explanation of your reasoning. This statement, signed by one of your directors, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your directors, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practice Procedures.

If you do not protest this proposed adverse ruling in a timely manner, the Internal Revenue Service will consider you to have failed to exhaust available administrative remedies. Section 7428 of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 90 days, this proposed ruling will become final and we will forward copies of it to the District Director, Cincinnati, Ohio. Thereafter, any questions about your federal income tax status or the filing of tax returns should be addressed to that office. We will also notify appropriate state officials will be notified of the finality of this proposed adverse ruling in accordance with the provisions of section 6104(c) of the Code.

When submitting additional letters with respect to this case to the Internal Revenue Service, you will expedite their receipt by placing the following address on the envelope:

Internal Revenue Service
111 Constitution Avenue, NW
Washington, DC 20224

[REDACTED]

The symbols do not refer to your case but rather to its location. Therefore, it is important that the address appear on the envelope exactly as shown above.

Sincerely yours,

[REDACTED]

Chief, Exempt Organizations
Rulings Branch 1

cc: [REDACTED]

cc: [REDACTED]

[REDACTED]

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Surname	[REDACTED]	[REDACTED]					
Date	6/15/93	6/15/93					